



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in a Petition for Reconsideration of EPA's 2009 Greenhouse Gas Endangerment Finding

FROM: Justina Fugh **Justina Fugh** Digitally signed by Justina Fugh
Date: 2021.01.14 18:12:03 -05'00'
Alternate Designated Agency Ethics Official and
Director, Ethics Office

TO: Adam Gustafson
Deputy General Counsel

Prior to entering federal service on March 29, 2020, you were a partner at Boyden Gray & Associates, providing legal and lobbying services to a variety of clients. Now, as Deputy General Counsel of the United States Environmental Protection Agency (EPA), you seek to participate in a specific party matter in which one of your former clients, the Competitive Enterprise Institute (CEI), is a party. You indicate that you did not yourself work personally and substantially on that same matter. You have received a waiver from the White House Counsel's office and now seek an impartiality determination from me. Your request is granted. This memorandum confirms in writing the determination I made on January 13, 2021.

NEED FOR A PLEDGE WAIVER

Pursuant to Executive Order 13770, you signed the Ethics Pledge and are prohibited from participating in specific party matters in which your former employer or former client is a party or represents a party. Given the Agency's interest in having your participation in certain matters, the EPA sought a waiver of the provisions of Section 1, paragraph 6 of the Ethics Pledge on your behalf. This waiver, which was granted on June 17, 2020, authorized you to participate personally and substantially in specific litigation as well as other potential cases arising at EPA in which your former client, CEI, is a party, provided that you did not previously participate personally and substantially in that same matter for CEI or any other party. *See attachment.*

NEED FOR IMPARTIALITY DETERMINATION

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, Subpart E, "Impartiality in Performing Official Duty." For one year from the date your last provided services to CEI, you have a "covered relationship" with them pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). Absent an impartiality determination from me, you still cannot participate in

any specific party matter in which CEI is a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that EPA takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Deputy General Counsel in specific party matters in which CEI is a party, provided that you did not participate personally and substantially in the matter previously with CEI or any other party. In making this determination to enable you to effectively carry out your duties as Deputy General Counsel and to advance the interests of the Agency, I have taken the following factors into consideration:

Nature of the relationship involved – A graduate of the University of Virginia and Yale Law School, you clerked for judges on the Ninth Circuit and the D.C. Circuit before entering private practice. Prior to becoming a partner at Boyden Gray & Associates, you were an associate at Cooper & Kirk where you specialized in appellate litigation. While at Boyden Gray & Associates, you represented States, environmental groups, biofuel producers, agricultural interests, and public policy organizations, on air quality and automotive regulations and other Clean Air Act (CAA) matters. You have argued CAA appeals in the U.S. Court of Appeals for the D.C. Circuit and testified before Congress on CAA regulations. Through this work, you have gained extensive experience in CAA regulations and litigation.

Effect of the matter upon your financial interest – You have no continuing financial interest with CEI, nor do you have any financial interest in the outcome of this petition for reconsideration.

Nature and importance of the employee's role – In addition to serving as the chief legal advisor to EPA and implementing the nation's environmental laws, the Office of General Counsel also represents the Agency in defense of agency actions. In the position of Deputy General Counsel, you must be able to provide legal counsel and vital input into the Agency's defense. Your invaluable knowledge and experience with Clean Air Act regulations and litigation are of great

importance in advocating the interests of the Agency in its consideration of this petition and in advising the Acting General Counsel and Administrator.

Sensitivity of the matter – Your participation in this specific party matter, including decisions the Agency makes at this point in this Administration, will be of importance to the Administrator and senior leadership. The case involves nationally significant air issues and Administration interests.

Difficulty of reassigning the matter to another employee – Your expertise and comprehensive understanding of CAA regulations and litigation are crucial for EPA, including for this case. The previous political Deputy General Counsel with CAA expertise started in January 2017 and departed in December 2019. You were hired because of your extensive CAA expertise which is needed to counsel and advise the EPA Administrator and senior leadership on behalf of the Agency.

Under this limited authorization, you may participate personally and substantially in the CEI petition for reconsideration of EPA's 2009 Greenhouse Gas Endangerment Finding. I determine that your expertise is needed for similar reasons as described above. Thus, this authorization permits you to participate in other specific party matters in which CEI is a party provided that you did not previously participate personally and substantially while serving as an attorney for CEI or any other party. You will be allowed to participate in these specific party matters, including meetings or communications related to such cases even if CEI is present. But you must remain recused from those specific party matters in which your former client is a party if you participated personally and substantially previously. You will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as your own attorney bar obligations.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh of OGC/Ethics or me.

Attachment

cc: David Fotouhi, Acting Principal Deputy General Counsel
 Jim Payne, Designated Agency Ethics Official and Deputy General Counsel for
 Environmental Media and Regional Law Offices
 Elise Packard, Deputy General Counsel for Operations
 Kamila Lis-Coghlan, Deputy General Counsel

MEMORANDUM

TO: JAMES PAYNE
DEPUTY GENERAL COUNSEL FOR ENVIRONMENTAL MEDIA AND
REGIONAL LAW OFFICES, AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: SCOTT F. GAST
DEPUTY COUNSEL AND DEPUTY ASSISTANT TO THE PRESIDENT
THE WHITE HOUSE

DATE: June 17, 2020

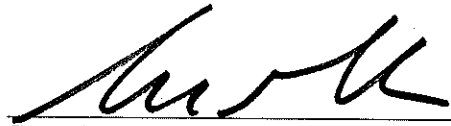
SUBJECT: Limited Waiver of Section 1, Paragraph 6 of Executive Order 13770

Official: Adam Gustafson
Deputy General Counsel
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby provide a limited waiver of the requirements of Section 1, paragraph 6 of Executive Order 13770 to Mr. Adam Gustafson to allow him to participate in specific party matters, including *American Lung Association v. EPA*, No. 19-1140 (D.C. Cir.), despite the involvement of his former client, the Competitive Enterprise Institute (CEI). I have determined that it is in the public interest to grant this limited waiver because of Mr. Gustafson's extensive experience in Clean Air Act regulation and litigation, the fact that he did not previously participate in the *American Lung Association* litigation, and the importance of his involvement in this specific party matter to assist with the Administration's defense of the Affordable Clean Energy (ACE) Rule.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 6 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Gustafson so that he can effectively carry out his duties as Deputy General Counsel and ably advise the EPA Administrator and senior leadership. Accordingly, I authorize Adam Gustafson to be able to participate personally and substantially in *American Lung Association v. EPA*, No. 19-1140 (D.C. Cir.), and any other potential cases arising at EPA where CEI is a party and Mr. Gustafson did not previously participate personally and substantially while serving as an attorney for CEI or any other party. He will be allowed to participate in those specific party matters, including meetings or communications related to such cases where CEI is present. However, he will remain recused from those specific party matters in which his former client is a party if he had himself participated personally and substantially previously.

This limited waiver does not affect the application of any other provision of law, including any other provision of the Ethics Pledge; the Standards of Ethical conduct for Employees of the Executive Branch (5 C.F.R. Part 2635); or the criminal bribery, graft and conflict of interest statutes (18 U.S.C. §§ 201-209; or the Hatch Act (5 U.S.C. § 7323).



Scott F. Gast

Deputy Counsel and Deputy Assistant to the President

Dated: _____

6/17/2020



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

June 17, 2020

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the Competitive Enterprise Institute

FROM: James Payne
Designated Agency Ethics Official and
Deputy General Counsel for Environmental Media and Regional Law Offices

TO: Adam Gustafson
Deputy General Counsel

Prior to entering federal service on March 29, 2020, you were a partner at Boyden Gray & Associates, providing legal and lobbying services to a variety of clients. Now, as Deputy General Counsel of the United States Environmental Protection Agency (EPA), you seek to participate in specific party matters in which one of your former clients, the Competitive Enterprise Institute (CEI), is a party, provided that you did not yourself work personally and substantially on that same matter. You have received a waiver from the White House Counsel's office and now seek an impartiality determination from me. Your request is granted.

BACKGROUND

The previous Administration issued the Clean Power Plan (CPP) on October 23, 2015, and it was quickly challenged by numerous entities. *See State of West Virginia v. EPA*, No. 15-1363 (D.C. Cir.). The 2015 CPP was then stayed by the U.S. Supreme Court, keeping it from going into effect. On October 10, 2017, following a review as directed by President Trump's Energy Independence Executive Order, EPA proposed to repeal the 2015 CPP.

After determining that the 2015 CPP exceeded EPA's statutory authority under the Clean Air Act, the EPA proposed the Affordable Clean Energy (ACE) Rule on August 21, 2018, to reduce greenhouse gas emission from existing coal-fired electric utility generating units and power plants. This new rule, finalized on June 19, 2019, replaces the 2015 CPP and establishes emission guidelines for states to develop plans to address greenhouse gas emissions from existing coal-fired power plants. The ACE Rule was also challenged, including *American Lung Association v. EPA*, No. 19-1140 (D.C. Cir.). You, however, did not participate in this litigation on behalf of CEI or any other client.

NEED FOR A PLEDGE WAIVER

Pursuant to Executive Order 13770, you signed the Ethics Pledge and are prohibited from participating in specific party matters in which your former employer or former client is a party or represents a party. Given the Agency's interest in having your participation in the ACE litigation, the EPA sought a waiver of the provisions of Section 1, paragraph 6 of the Ethics Pledge on your behalf. This waiver, which was granted on June 17, 2020, authorizes you to participate personally and substantially in the *American Lung Association* litigation and any other potential cases arising at EPA in which your former client, CEI, is a party, provided that you did not previously participate personally and substantially in that same matter for CEI or any other party. *See* attachment.

NEED FOR IMPARTIALITY DETERMINATION

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, Subpart E, "Impartiality in Performing Official Duty." For one year from the date you last provided services to CEI, you have a "covered relationship" with them pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). Absent an impartiality determination from me, you still cannot participate in any specific party matter in which CEI is a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that EPA takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Deputy General Counsel in specific party matters in which CEI is a party, provided that you did not participate personally and substantially in the matter previously with CEI or any other party. In making this determination to enable you to effectively carry out your duties as Deputy General Counsel and to advance the interests of the Agency, I have taken the following factors into consideration:

Nature of the relationship involved – A graduate of the University of Virginia and Yale Law School, you clerked for judges on the Ninth Circuit and the D.C. Circuit before entering private practice. Prior to becoming a partner at Boyden Gray & Associates, you were an associate at Cooper & Kirk where you specialized in appellate litigation. While at Boyden Gray & Associates, you represented States, environmental groups, biofuel producers, agricultural interests, and public policy organizations, on air quality and automotive regulations and other Clean Air Act (CAA) matters. You have argued CAA appeals in the U.S. Court of Appeals for the D.C. Circuit and testified before Congress on CAA regulations. Through this work, you have gained extensive experience in CAA regulations and litigation.

During the year prior to your federal appointment, you provided legal services to CEI and represented this entity in the litigation related to EPA's 2015 CPP. Those proceedings were dismissed shortly after EPA finalized the ACE Rule in 2019. Of importance is that your Clean Air Act-related representation of CEI was limited to the CPP litigation (*West Virginia v. EPA*), and neither you nor your former firm provided legal services to CEI regarding the ACE Rule or related litigation (*American Lung Association v. EPA*).

Effect of the matter upon your financial interest – You have no continuing financial interest with CEI, nor do you have any financial interest in the outcome of this case.

Nature and importance of the employee's role – In addition to serving as the chief legal advisor to EPA and implementing the nation's environmental laws, the Office of General Counsel also represents the Agency in court challenges to agency actions. In the position of Deputy General Counsel, you must be able to provide legal counsel and vital input into the Agency's defense of such challenges, including the ACE Rule litigation. Your invaluable knowledge and experience with Clean Air Act regulations and litigation are of great importance in advocating the interests of the Agency in defending the ACE Rule and advising the Administrator and senior leadership, especially given the recent departure of OGC's previous political appointee in the role of Deputy General Counsel specializing in the CAA.

Sensitivity of the matter – The ACE Rule empowers states to continue to reduce emissions while providing affordable and reliable energy for all Americans. Your participation in this important specific party matter, including decisions the Agency makes to defend the ACE Rule, will be of importance to the Administrator and senior leadership. The case involves nationally significant air issues and Administration interests.

Difficulty of reassigning the matter to another employee – Your expertise and comprehensive understanding of CAA regulations and litigation are crucial for EPA, including for this case. The previous political Deputy General Counsel with CAA expertise started in January 2017 and departed in December 2019. You were hired because of your extensive CAA expertise which is needed to counsel and advise the EPA Administrator and senior leadership on behalf of the Agency, including for this case which is particularly important to the priorities of the Administration.

Under this limited authorization, you may participate personally and substantially in *American Lung Association v. EPA*, No. 19-1140 (D.C. Cir.). There could potentially be other

specific party matters involving CEI in which your expertise is needed for similar reasons as described above. Thus, this authorization permits you to participate in other specific party matters in which CEI is a party provided that you did not previously participate personally and substantially while serving as an attorney for CEI or any other party. You will be allowed to participate in these specific party matters, including meetings or communications related to such cases even if CEI is present. But you must remain recused from those specific party matters in which your former client is a party if you participated personally and substantially previously. You will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as your own attorney bar obligations.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo or Justina Fugh of OGC/Ethics or me.

Attachment

cc: Matthew Z. Leopold, General Counsel
David Fotouhi, Principal Deputy General Counsel
Elise Packard, Deputy General Counsel for Operations
Kamila Lis-Coghlan, Deputy General Counsel
Ariadne Goerke, Acting Associate Deputy General Counsel
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, DC 20460

OFFICE OF
GENERAL COUNSEL

February 4, 2022

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters
Involving DC Water
JUSTINA FUGH

FROM: Justina Fugh **FUGH**
Alternate Designated Agency Ethics Official and
Director, Ethics Office

TO: Adam Ortiz
Regional Administrator
Region 3

Digitally signed by
JUSTINA FUGH
Date: 2022.02.04
12:25:27 -05'00'

As Regional Administrator for the United States Environmental Protection Agency (EPA) Region 3, you seek permission to participate in specific party matters involving the District of Columbia Water and Sewer Authority (DC Water). Within the last year, prior to being selected for this position, you served as a principal board member, representing Montgomery County, your employer at that time.

Pursuant to Executive Order 13989 and the Biden Ethics Pledge that you signed upon appointment, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state governments and their agencies are excluded under the definition of “former employer.”¹ Because your service on the DC Water board was on behalf of Montgomery County, we have determined that the Ethics Pledge does not apply. What remains is an impartiality concern.

The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, “Impartiality in Performing Official Duty.” Upon assuming the position of Regional Administrator, you have a “covered relationship” with DC Water pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year after October 29, 2021, when you resigned from the DC Water Board, absent an impartiality determination from an EPA ethics official, you cannot participate in any specific party matter in which it is a party or represents a party if that matter is likely to have a direct and predictable effect upon DC Water or if the circumstances would cause a reasonable person with knowledge

¹ See Exec. Order 13989, Section 2(k), which provides that “‘former employer’ does not include...State or local government.”

of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you lead the Region and are part of the Agency's political leadership team. You will be asked to participate in discussions and meetings related to particular matters that affect the Region, including the District of Columbia and its agencies. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve DC Water, so long as they are not the very same specific party matters that you worked on personally and substantially for DC Water. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Your connection to DC Water arises by virtue of your employment with Montgomery County, Maryland. The District, like many states, shares responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with states on a continuing and frequent basis, including through their utility and regulatory agencies.

Effect of the matter upon your financial interest – You do not have any financial interest with respect to DC Water.

Nature and importance of the employee's role – In your role as Regional Administrator, you will be responsible for the District of Columbia as well as the Region's five states and its tribal nations. You will be expected to communicate freely with all of the entities in your region, including the District of Columbia and its agencies, including DC Water.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raises nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in regional matters and nationally significant issues will be of importance to the Administrator.

While we have issued you this determination to interact with DC Water, so long as you are not working on specific party matters that you participated in personally and substantially while on the board of DC Water, nothing in this impartiality determination should preclude you from choosing to recuse yourself voluntarily, although you are advised to confer with OGC/Ethics or your regional ethics counsel should such a circumstance arise.

This authorization will remain in effect for the remainder of your cooling-off period. After October 29, 2022, you will no longer have a covered relationship with DC Water under the impartiality standards and will no longer require this determination.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Victoria Clarke at clarke.victoria@epa.gov or me at fugh.justina@epa.gov.

cc: Diana Esher, Deputy Regional Administrator
Allison Gardner, Acting Regional Counsel
Phil Yeany, Team Lead for Ethics
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

DEC 28 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Texas

FROM: Kevin S. Minoli *KSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Anne Idsal
Regional Administrator
Region 6

As the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 6, you seek permission to participate in specific party matters involving the State of Texas. Within the last year, prior to being selected for this position, you served as Chief Clerk and Deputy Land Commissioner for the Texas General Land Office (TX GLO).

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Texas employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Texas.

I understand that you are not vested in the defined benefit plan with the State of Texas. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208. However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you will have a "covered relationship" with the State of Texas pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the TX GLO, absent

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

an impartiality determination from me, you cannot participate in any specific party matter in which the State of Texas is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. Your area of responsibility includes Texas, as well as Arkansas, Louisiana, New Mexico, Oklahoma, and 66 federally-recognized tribes. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including Texas, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of Texas with the following limitation: you must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the TX GLO. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since March 2015, you have served as the Chief Clerk for the TX GLO, which is a Texas state agency responsible for managing state lands and the Texas coast, among other things. As Chief Clerk you oversaw all budget and expenditure matters and initiated the TX GLO's reorganization efforts to optimize business functions and provide cost savings for taxpayers. You served in this role for over two years, but I note that you previously served as General Counsel for TX GLO and also worked for the state environmental agency, the Texas Commission of Environmental Quality (TCEQ). Sensitivities regarding your impartiality will necessarily revolve around those issues in which you participated personally and substantially for the State of Texas in all of your previous roles. But, for purposes of the federal

impartiality standards, we are focused only on your "covered relationship" with your previous employer from the last year, the TX GLO. I also note that states share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Nature and importance of the employee's role – Texas constitutes a significant portion of your portfolio as the leader of your region since your area of responsibility covers Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and 66 federally-recognized tribes. In your role as Regional Administrator, you are expected to communicate freely with states, including Texas.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the TX GLO that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Texas, but not on the very same specific party matters on which you worked on personally and substantially while employed by the TX GLO. This "cooling off" period with the State of Texas will last for one year from the date you left the TX GLO. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Deputy Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue to recuse yourself from those matters in which you had previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters if necessary. To that end, I understand that you will not participate in any particular matter involving specific parties that are still pending with EPA that you worked on personally and substantially while at TCEQ. You are cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or any member of your regional ethics team.

cc: Sam Coleman, Deputy Regional Administrator, Region 6
Jim Payne, Regional Counsel, Region 6
Ben Harrison, Deputy Regional Counsel, Region 6
Jan Gerro, Regional Ethics Counsel, Region 6
Terry Sykes, Regional Ethics Counsel, Region 6
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

May 12, 2022

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters Involving the City of Seattle

FROM: Justina Fugh, Director **JUSTINA FUGH**
Ethics Office and Alternate Designated Agency Ethics Official

Digitally signed by
JUSTINA FUGH
Date: 2022.05.12
15:56:01 -04'00'

TO: Casey Sixkiller
Regional Administrator
Region 10

As Regional Administrator for the United States Environmental Protection Agency (EPA) Region 10, you seek permission to participate in specific party matters involving the City of Seattle, Washington. Within the last year, prior to being selected for this position, you served as the Senior Strategic Director for the Office of the Mayor.

Pursuant to Executive Order 13989 and the Biden Ethics Pledge that you signed, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state and local government are excluded under the definition of “former employer.”¹ Therefore, the Ethics Pledge does not apply to your City of Seattle employment.

You are not vested in any defined benefit plan with the City of Seattle so do not have any financial conflict of interest. What remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, “Impartiality in Performing Official Duty.” Pursuant to 5 C.F.R. § 2635.502(b)(1)(iv), you have a “covered relationship” with the City of Seattle as your former employer. Until January 3, 2023, absent an impartiality determination from OGC/Ethics, you cannot participate in any specific party matter in which Seattle is a party or represents a party if that matter is likely to have a direct and predictable effect upon it or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

¹ *See* Exec. Order 13989, Section 2(k), which provides that “‘former employer’ does not include...State or local government.”

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You may be asked to participate in discussions and meetings related to particular matters that affect the City of Seattle. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the City of Seattle, but not for any specific party matters that you had participated in personally and substantially previously. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – While employed by the City of Seattle, you served as the Senior Strategic Director and, previous to that, as the Deputy Mayor for Operations. You did not hold any position through which the City might share responsibility with EPA in protecting human health and the environment.

Effect of the matter upon your financial interest

You are not vested in any defined benefit plan with the City so do not have any financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – In your role as Regional Administrator, you will be responsible for four states and 271 tribal nations. You will be expected to communicate freely with all of the cities, states and tribes in your region, including Seattle.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raises nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues will be of importance to the Administrator.

While we have issued you this limited determination to interact with the City of Seattle, except for any specific party matter that you had participated in previously on their behalf, nothing in this impartiality determination should preclude you from choosing to recuse yourself voluntarily, although you are advised to confer with OGC/Ethics or your Regional Counsel should such a circumstance arise. You should also consult with ethics officials if you have any questions about potential matters involving the City of Seattle as an entity.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Janet McCabe, Deputy Administrator
Dan Utech, Chief of Staff
Michelle Pirzadeh, Deputy Regional Administrator, Region 10
Beverly Li, Regional Counsel, Region 10
Garth Wright, Regional Ethics Counsel, Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JAN - 3 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

FROM: Kevin S. Minoli *KSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Cathy Stepp
Regional Administrator
Region 5

As the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 5, you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as Secretary of the Wisconsin Department of Natural Resources.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Wisconsin employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Wisconsin.

I understand that you have a defined benefit plan with the State of Wisconsin. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you will have a "covered relationship" with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Natural Resources, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. Your area of responsibility includes Wisconsin, as well as Indiana, Illinois, Michigan, Minnesota and Ohio. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including Wisconsin, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of Wisconsin with the following limitation: you must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the Wisconsin Department of Natural Resources. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2011, you have served as the Secretary for the Wisconsin Department of Natural Resources, which is the third largest agency in Wisconsin. In

this significant leadership role, you led the state's environmental agency responsible for state enforcement and protection of wildlife, fisheries, state parks, trail, forests and environmental permitting. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Department of Natural Resources. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Regional Administrator will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – Wisconsin constitutes a significant portion of your portfolio as the leader of your region since your area of responsibility covers Indiana, Illinois, Michigan, Minnesota, Ohio and Wisconsin. In your role as Regional Administrator, you are expected to communicate freely with states, including Wisconsin.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Natural Resources that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Natural Resources. This "cooling off" period with the State of Wisconsin will last for one year from the date you left the Department of Natural Resources for those specific party matters that you did not participate in personally and substantially. You have voluntarily agreed not participate in any specific party matter involving Wisconsin in which you had previously participated. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Deputy Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue to recuse yourself from those matters in which you had

previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

While I have issued you this determination to interact with the State of Wisconsin with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Wisconsin. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or your regional ethics team.

cc: Ed Chu, Acting Deputy Regional Administrator, Region 5
Leverett Nelson, Regional Counsel, Region 5
Ann Coyle, Regional Ethics Counsel, Region 5
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

DEC 19 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Specific Party Matters Involving the State of Alaska

FROM: Kevin S. Minoli *KSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Chris Hladick
Regional Administrator
Region 10

As the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 10, you seek permission to participate in specific party matters involving the State of Alaska. Within the last year, prior to being selected for this position, you served as Commissioner of the Department of Commerce, Community and Economic Development for the State of Alaska.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Alaska employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Alaska.

I understand that you have a defined benefit plan with the State of Alaska. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

duties.

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you will have a "covered relationship" with the State of Alaska pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the time you resign from the State of Alaska, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Alaska is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of Region 10 and part of the Agency's political team. Your area of responsibility includes Alaska, as well as Washington, Oregon, Idaho, Alaska, and 271 federally-recognized tribes. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including Alaska. You will therefore be expected to participate in discussions and meetings related to particular matters that affect Alaska. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of Alaska. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Your prior employment was with the Department of Commerce, Community and Economic Development, which is separate from the state environmental agency, the Department of Environmental Conservation. I note that, in your

official capacity, you also served in fiduciary roles on two state boards.² States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with states on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Regional Administrator will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – As the leader of Region 10, Alaska is a substantial area of responsibility for you since the Region covers Washington, Oregon, Idaho, Alaska, and 271 federally-recognized tribes in the Pacific Northwest and Alaska. In your role as Regional Administrator, you are expected to communicate freely with states, including Alaska.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues will be of importance to the Administrator.

While we have issued you this determination to interact with the State of Alaska, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Alaska. Nothing in this impartiality determination should preclude you from choosing to recuse yourself, although you are advised to confer with your Regional Counsel should such a circumstance arise.

This authorization will remain in effect for the remainder of your cooling off period. After one year from the date of your resignation from the State of Alaska, you will no longer have a covered relationship with Alaska under the impartiality standards and will no longer require this determination.

² Alaska Marine Pilots Board and the Alaska Mariculture Task Force. Any other board service was either non-fiduciary or delegated to a subordinate. EPA believes it unlikely that you participated personally and substantially in those matters and that there is little likelihood of any nexus with your EPA duties.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Michelle Pirzadeh, Deputy Regional Administrator, Region 10
Allyn Stern, Regional Counsel, Region 10
Socorro Rodriguez, Regional Ethics Counsel, Region 10
Garth Wright, Regional Ethics Counsel, Region 10
Justina Fugh, Senior Counsel for Ethics




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

NOV 15 2017

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving Bucks County, Pennsylvania

FROM: Kevin S. Minoli 
Designated Agency Ethics Official and
Acting General Counsel

TO: Cosmo Servidio
Regional Administrator
Region III

You were recently appointed as the Regional Administrator for the United States Environmental Protection Agency (EPA) Region III and seek permission to participate in specific party matters involving Bucks County, Pennsylvania. Within the last year, prior to being selected for this position, you served as director of environmental affairs for the Bucks County Water & Sewer Authority (BCWSA), created by Bucks County under the Pennsylvania Municipality Authorities Act, 53 Pa. C. S. § 5601 *et. seq.*

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, local government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your Bucks County employment. But since federal ethics rules do not contain a similar exclusion for local governments, those rules do apply to your employment with BCWSA, created by Bucks County.

Thus, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you will have a "covered relationship" with BCWSA and, by extension, Bucks County, Pennsylvania pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the time you resign from the BCWSA, absent an impartiality determination from me, you

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

cannot participate in any specific party matter in which BCWSA or Bucks County is a party or represents a party if that matter is likely to have a direct and predictable effect upon the BCWSA or County or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You may be asked to participate in discussions and meetings related to particular matters that affect BCWSA or Bucks County, Pennsylvania. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve BCWSA or Bucks County with the following limitation: You must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the BCWSA. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – For the past year, you have served as the director of environmental affairs for the BCWSA, which is one of the largest water and sewer authorities in the Commonwealth of Pennsylvania. In this significant leadership role, you oversaw operations and facility planning to help identify needed improvements to maintain essential water and wastewater services. You also provided oversight to ensure utilities comply with all state and federal requirements. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the BCWSA, especially those related to BCWSA's compliance with state and federal requirements. Additionally, your employment during the previous year was with a local municipal authority, rather than with the state environmental agency. But States and local governments share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its

regions, works closely and directly with states and local governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is no possibility that any of EPA’s actions will affect your own financial interests or those interests imputed to you under the financial and impartiality rules. *See* 18 U.S.C. § 208 and 5 C.F.R. § 2635.502.

Nature and importance of the employee’s role – As the leader of Region III, you oversee environmental protection efforts in Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. In your role as Regional Administrator, you are expected to communicate freely with these states and their local governmental entities.

Sensitivity of the matter – There may be specific party matters in which you did not participate personally and substantially for BCWSA or Bucks County that will rise to your level of attention. These matters may merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore, in the Agency’s interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve BCWSA or Bucks County, but not on the very same specific party matters on which you worked while employed by the BCWSA. This “cooling off” period with BCWSA and Bucks County will last for one year from the date you left BCWSA. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you or your Deputy Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue to recuse yourself from these matters unless OGC/Ethics determines that the Agency’s interest in your participation outweighs any impartiality concern and authorizes you to participate.

While I have issued you this determination to interact with BCWSA or Bucks County on new or future specific party matters, except for any of the same specific party matters on which you participated in personally and substantially while with the BCWSA, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves BCWSA or Bucks County. Nothing in this impartiality determination should preclude you from choosing to recuse yourself altogether. For example, due to your previous employment with the Pennsylvania Department of Environmental Protection (PADEP) and your PADEP-related work on an EPA specific party matter involving the BCWSA, you have voluntarily agreed not to work on this specific party matter during your tenure at EPA.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or any member of your regional ethics team.

cc: Cecil A. Rodrigues, Deputy Regional Administrator, Region III
Mary Coe, Regional Counsel, Region III
Deane Bartlett, Regional Ethics Counsel, Region III
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

JAN 11 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

FROM: Kevin S. Minoli *KSO*
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: David Ross
Assistant Administrator
Office of Water

As the Assistant Administrator for the United States Environmental Protection Agency's (EPA) Office of Water, you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as Wisconsin Assistant Attorney General and Director of the Environmental Protection Unit for the Wisconsin Department of Justice.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Wisconsin employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Wisconsin.

I understand that you have both defined benefit and defined compensation plans with the State of Wisconsin. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Assistant Administrator for Water will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Assistant Administrator, you will have a "covered relationship" with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Justice, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality and I am authorizing you to participate as Assistant Administrator for Water in particular matters that involve the State of Wisconsin with the following limitation: you must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the Wisconsin Department of Justice. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since May 2016, you have served as the Wisconsin Assistant Attorney General and Director of the Environmental Protection Unit for the Wisconsin Department of Justice. In this role, you were responsible for managing the environmental litigation unit which represents the Wisconsin Department of Natural Resources and the State of Wisconsin in federal and state court, defending agency decisions, prosecuting environmental enforcement cases, and providing legal and policy advice on environmental and natural resource

issues. You served in this role for over one year, but I note that you previously worked in the Wyoming Attorney General's Office as a Senior Assistant Attorney General and a member of the Water and Natural Resources Division. In Wyoming, you were responsible for representing the Water Quality Division of the Wyoming Department of Environmental Quality in all environmental and natural resources legal matters. Sensitivities regarding your impartiality will necessarily revolve around those issues in which you participated personally and substantially in all of your previous roles. But, for purposes of the federal impartiality standards, we are focused only on your "covered relationship" with your previous employer from the last year, the Wisconsin Department of Justice. I also note that states share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Assistant Administrator will not affect any pay-outs you may receive from your retirement plans.

Nature and importance of the employee's role – As the Assistant Administrator for Water, you are responsible for advising the Administrator in matters pertaining to the implementation of various water-related statutes to ensure safe drinking water, the restoration and maintenance of oceans, watersheds and their aquatic ecosystems to protect human health, support economic and recreational activities, and provide healthy habitat for fish, plants and wildlife. OW frequently works with state and local governments to provide guidance, specify scientific methods and data collection requirements, perform oversight and facilitate communications. In the role of Assistant Administrator, you are expected to communicate freely with states, including Wisconsin.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Justice that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Assistant Administrator for Water in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Justice. This "cooling off" period with the State of Wisconsin will last for one year from the date you left the Wisconsin Department of Justice. If the Agency determines that

we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue to recuse yourself from those matters in which you had previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters if necessary. To that end, I understand that you will not participate in any particular matter involving specific parties that are still pending with EPA that you worked on personally and substantially while at the Wyoming Attorney General's Office. You are cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Dennis Lee Forsgren, Jr., Deputy Assistant Administrator
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

DEC 11 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving Holland & Hart LLP

FROM: Kevin S. Minoli *LSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Doug Benevento
Regional Administrator
Region 8

This memorandum addresses your ethics obligations with respect to Holland & Hart LLP (Holland & Hart), a law firm that practices environmental law and where your spouse is employed as an attorney. Because your spouse is not an equity sharing principal and does not receive any bonus based on the profitability of the firm, you do not have a financial conflict of interest with her employer, Holland & Hart. What remains is whether you may participate in particular matters in which your spouse's employer is a party or represents a party. As explained in more detail below, I am granting you a limited impartiality determination.

Pursuant to 5 C.F.R. § 2635.502(b)(1)(iii), you have a "covered relationship" with Holland & Hart given your spouse's employment. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Absent an impartiality determination, you cannot participate in any specific party matter in which Holland & Hart is a party or represents a party if that matter is likely to have a direct and predictable effect upon the firm or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve Holland & Hart with the following limitation, however unlikely: you must recuse yourself from participation in EPA specific party matters if your spouse participates in the same specific party matters. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Your spouse is employed part time as of counsel at Holland & Hart. Her areas of practice do not include environmental matters or involve the EPA. Thus, the intersection between your spouse's work and that of the Agency is extremely remote.

Effect of the matter upon your financial interest – Your spouse has no equity interest in the firm's revenues since she is not an equity sharing partner at the firm. Also, she does not receive any bonus from the firm. Due to this compensation arrangement with the firm, I conclude that there is no possibility that any of EPA's actions involving Holland & Hart will affect your own financial interests or those imputed to you under the financial and impartiality rules. *See* 18 U.S.C. § 208 and 5 C.F.R. § 2635.502.

Nature and importance of the employee's role – As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You may be asked to participate in discussions and meetings related to particular matters that involve Holland & Hart.

Sensitivity of the matter – I understand that in Region 8 there are already a number of specific party matters where Holland & Hart provides legal representation. These matters will likely rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation and input as Regional Administrator in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in specific party matters that involve Holland & Hart, but not the same specific party matters which your spouse participates in while employed at the firm. If the Agency determines that we have a compelling reason for your participation as an EPA official on any specific party matter that your spouse participates in personally and substantially, then you or your Deputy Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue to recuse yourself from these matters unless EPA ethics officials determine that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

While I have issued you this determination to interact with Holland & Hart on specific party matters, except for any specific party matter in which your spouse participates, please note that you may elect to voluntarily make adjustments to your duties and not participate in a particular matter that involves Holland & Hart. Nothing in this impartiality determination should preclude you from choosing to recuse yourself altogether from specific party matters in which Holland & Hart represents a party, but doing so is not necessary under the federal ethics rules.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or any member of your regional ethics team.

cc: Deb Thomas, Deputy Regional Administrator, Region 8
Kenneth Schefski, Regional Counsel, Region 8
Paul Logan, Deputy Regional Counsel, Region 8
Elyana Sutin-McCeney, Deputy Regional Counsel, Region 8
Michael Gleason, Regional Ethics Counsel, Region 8
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

November 29, 2021

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters
Involving the State of Colorado
JUSTINA

FROM: Justina Fugh **FUGH** Digitally signed by
JUSTINA FUGH
Date: 2021.11.29
15:42:23 -05'00'
Alternate Designated Agency Ethics Official and Director, Ethics Office

TO: K.C. Becker
Regional Administrator
Region 8

As Regional Administrator for the United States Environmental Protection Agency (EPA) Region 8, you seek permission to participate in specific party matters involving the State of Colorado. Within the last year, prior to being selected for this position, you served as an elected member of the Colorado House of Representatives.

Pursuant to Executive Order 13989 and the Biden Ethics Pledge that you signed upon appointment, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Colorado employment.

I understand that you have a defined benefit plan with the State of Colorado. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part

¹ See Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

2635, specifically Subpart E, “Impartiality in Performing Official Duty.” Upon assuming the position of Regional Administrator, you will have a “covered relationship” with the State of Colorado pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year after January 13, 2021 when you left office, absent an impartiality determination from an EPA ethics official, you cannot participate in any specific party matter in which the State of Colorado is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency’s political team. You will be asked to participate in discussions and meetings related to particular matters that affect Colorado. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of Colorado, but not for any interactions involving the Colorado House of Representatives as an entity. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – First appointed and then elected twice, you served as a member of the Colorado House of Representatives from 2013 to January 2021. You did not hold any position with the state environmental regulatory agency through which Colorado shares responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with states on a continuing and frequent basis.

Effect of the matter upon your financial interest

I understand that you have a defined benefit plan with the State of Colorado. Although you have a financial conflict of interest pursuant to 18 U.S.C. § 208, it is not disqualifying. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA’s experience, it is unlikely you as the Regional

Administrator will be in any position to affect the State's ability or willingness to pay benefits to its retirees.

Nature and importance of the employee's role – In your role as Regional Administrator, you will be responsible for six states and 28 tribal nations. You will be expected to communicate freely with all of the states in your region, including Colorado.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raises nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues will be of importance to the Administrator.

While we have issued you this determination to interact with the State of Colorado, except for the Colorado House of Representatives nothing in this impartiality determination should preclude you from choosing to recuse yourself voluntarily, although you are advised to confer with OGC/Ethics or your Regional Counsel should such a circumstance arise. You should also consult with ethics officials if you have any questions about potential matters involving the Colorado House of Representatives as an entity.

This authorization will remain in effect for the remainder of your cooling off period. After January 13, 2022, you will no longer have a covered relationship with the State of Colorado under the impartiality standards and will no longer require this determination.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Deb Thomas, Deputy Regional Administrator, Region 8
KC Schefski, Regional Counsel, Region 8
Brian Joffe, Regional Ethics Counsel, Region 8
Michael Gleason, Regional Ethics Counsel, Region 8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

AUG - 5 2019

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of New Mexico

FROM: Justina Fugh *justina fugh*
Alternate Designated Agency Ethics Official

TO: Ken McQueen
Regional Administrator
Region 6

As the Regional Administrator for Region 6 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of New Mexico. Within the last year, prior to being selected for this position, you served as Cabinet Secretary of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD).

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your State of New Mexico employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of New Mexico.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Senior Advisor for Water, you have a "covered relationship" with the State of New Mexico pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from EMNRD, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of New Mexico is

¹ See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of Region 6 and part of the Agency's political team. Your area of responsibility includes New Mexico, as well as Arkansas, Louisiana, Oklahoma, and Texas. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including New Mexico, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of New Mexico with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with EMNRD. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – From 2016 through 2018, you served as Cabinet Secretary for the New Mexico Energy, Minerals and Natural Resources Department. In this significant leadership role, you led the Department responsible for protecting and conserving New Mexico's natural and energy resources, and provided policy direction for EMNRD and its six divisions (Oil Conservation, Energy Conservation and Management, Mining and Minerals, State Forestry, State Parks, and Administrative Services). Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for EMNRD. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and

enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you are not vested in the defined benefit plan with the State of New Mexico. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – New Mexico will constitute a significant portion of your portfolio since your area of responsibility covers Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. In your role as Regional Administrator, you are expected to communicate freely with states in Region 6, including New Mexico.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for EMNRD that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of New Mexico, but not on the very same specific party matters on which you worked on personally and substantially while employed by EMNRD. With respect to those particular matters involving New Mexico as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Deputy Regional Administrator, or Regional Counsel may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you previously participated.

While I have issued you this determination to interact with the State of New Mexico with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves New Mexico. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as

voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: David Gray, Deputy Regional Administrator, Region 6
James Payne, Regional Counsel, Region 6
Erin E. Chancellor, Chief of Staff, Region 6
Terry Leddon, Regional Ethics Counsel, Region 6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

MAR - 1 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

FROM: Kevin S. Minoli *KSE*
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: Kurt Thiede
Chief of Staff
Region 5

As the Chief of Staff for Region 5 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as the Deputy Secretary of the Wisconsin Department of Natural Resources.

I understand that you have a defined benefit plan with the State of Wisconsin. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Chief of Staff for Region 5 will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

As an Administratively Determined (AD) appointment, you are not required to sign President Trump's Ethics Pledge because this type of appointment falls outside the definition of "appointee" set forth at Executive Order 13770 at Section 2(b).¹ However, what remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct

¹ See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, “Impartiality in Performing Official Duty.” Upon assuming the position of Chief of Staff, you will have a “covered relationship” with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Natural Resources, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

As the Chief of Staff, you serve as a key advisor to the Regional Administrator in all aspects under her purview. As part of the Region’s leadership team, your area of responsibility includes Wisconsin, as well as Indiana, Illinois, Michigan, Minnesota and Ohio. In your role as Chief of Staff, you are expected to communicate freely with the states in your region, including Wisconsin, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Chief of Staff in particular matters that involve the State of Wisconsin with the following limitation: you must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the Wisconsin Department of Natural Resources. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – For the past nineteen years, you have worked at the Wisconsin Department of Natural Resources in various positions. Since March 2015, you have served as the agency’s Deputy Secretary. In this leadership role, you helped oversee the state’s environmental agency responsible for state enforcement and protection of wildlife, fisheries,

state parks, trail, forests and environmental permitting. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Department of Natural Resources. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Chief of Staff will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – As Chief of Staff for Region 5, Wisconsin constitutes a significant portion of your portfolio since your area of responsibility covers Indiana, Illinois, Michigan, Minnesota, Ohio and Wisconsin. In your role as Chief of Staff, you are expected to communicate freely with states, including Wisconsin.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Natural Resources that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Chief of Staff in such matters will be of importance to the Regional Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Natural Resources. With respect to those particular matters involving Wisconsin as a specific party and in which you previously participated personally and substantially, you have voluntarily agreed, pursuant to our advice, not to participate at all for the duration of your EPA tenure. If, however the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

While I have issued you this determination to interact with the State of Wisconsin with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Wisconsin. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or your regional ethics team.

cc: Cathy Stepp, Regional Administrator, Region 5
Ed Chu, Acting Deputy Regional Administrator, Region 5
Leverett Nelson, Regional Counsel, Region 5
Ann Coyle, Regional Ethics Counsel, Region 5
Justina Fugh, Senior Counsel for Ethics

From: [Fugh, Justina](#)
To: [Garcia, Lisa](#)
Cc: [Griffo, Shannon](#); [Gonzalez, Eduardo](#)
Subject: impartiality determination for you
Date: Thursday, December 16, 2021 3:17:53 PM

Hi Lisa,

This note confirms that I have authorized you to participate in specific party matters that involve the City of New York. Although your spouse is currently employed by the City of New York, you have indicated that he does not work on any environmental issues or matters that would come before the Agency. Pursuant to the financial conflict of interest statute, 18 U.S.C. § 208, you cannot participate personally and substantially in any particular matter that will have a direct and predictable effect on your imputed interest, which is your spouse's employer. That said, we analyze conflicts arising out of spousal employment a little differently. We consider whether what you will be working on as Regional Administrator will impact the City's ability and willingness to continue to pay your spouse's compensation, which is unlikely to occur. Consequently, I conclude that 18 U.S.C. § 208 will not prohibit you from carrying out your official EPA duties that relate to the City of New York.

What remains is an impartiality concern under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E. You have a "covered relationship" with your spouse's current employer, the City of New York, which means that you cannot participate in any specific party matter in which the City of New York is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a). That said, the ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in your participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d).

Because your spouse does not work on any environmental issues at all, neither he nor his municipal office will come before the Agency. I have reviewed the impartiality factors set forth under the regulations and determined that the interest of the United States Government outweigh any concerns about your impartiality. This note formally confirms that I have authorized you to participate in particular matters in which the City of New York is a party

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please feel free to contact OGC/Ethics or your own regional ethics counsel.

Happy holidays!

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters
Involving the Natural Resources Defense Council

FROM: Justina Fugh Digitally signed by Justina Fugh
Date: 2021.06.24
22:33:48 -04'00'
Alternate Designated Agency Ethics Official and
Director, Ethics Office

TO: Marianne Engelman-Lado
Deputy General Counsel for Environmental Initiatives

Prior to entering federal service on January 31, 2021, you directed two environmental justice clinics --first at Yale University and then at Vermont Law School – both of which provided legal services to clients and trained law students in community lawyering and civil rights enforcement. As part of the Vermont Law School environmental justice clinic, you and co-counsel Southern Environmental Law Center (SELC) submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA) on behalf of several clients, including the Natural Resources Defense Council (NRDC).

Because NRDC was a “former client” of yours for federal ethics purposes and under Executive Order 13989, you could not participate in any specific party matter involving this entity unless you first sought and obtained ethics approval. The Designated Agency Ethics Official granted you a waiver from the Executive Order on April 14, 2021, and this memorandum formally confirms my impartiality determination granted orally on that same date.

NEED FOR A PLEDGE WAIVER

Pursuant to Executive Order 13989, you signed the Ethics Pledge and are prohibited from participating in specific party matters in which your former employer or former client (as defined in Section 2, paragraphs (k) and (l)) is a party or represents a party. Mindful of the fact that you had previously provided limited legal services to NRDC solely in the context of FOIA, and given the Agency’s interest in having your participation in environmental matters with NRDC that are unrelated to FOIA, the EPA sought a waiver of the provisions of Section 1, paragraph 2 of the Executive Order on your behalf. This limited waiver, which was granted on April 14, 2021, authorized you to participate personally and substantially in specific party matters arising at EPA in which your former client, NRDC, is a party, provided that you did not previously participate personally and substantially in that same matter for NRDC or any other party. *See attachment.*

NEED FOR IMPARTIALITY DETERMINATION

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, Subpart E, “Impartiality in Performing Official Duty.” For one year from the date you last provided services to NRDC, you have a “covered relationship” with them pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). Absent an impartiality determination from me, you still cannot participate in any specific party matter in which NRDC is a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). Although I granted this determination informally previously, I am confirming it in writing now.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that EPA takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Deputy General Counsel for Environmental Initiatives in specific party matters in which NRDC is a party, provided that you did not participate personally and substantially in the matter previously with NRDC or any other party. In making this determination to enable you to effectively carry out your duties as a Deputy General Counsel and to advance the interests of the Agency, I have taken the following factors into consideration:

Nature of the relationship involved – Your career has been devoted to civil rights and environmental justice. After graduating with your B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University, you served as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc., where you represented clients attempting to break barriers of access to health care and quality education. You also served for ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. In addition to lecturing and teaching about environmental justice, you also directed environmental justice clinics at Vermont Law School and Yale University.

Throughout your career, you have represented individual clients and nonprofits alike on a broad array of environmental law and environmental justice issues. Although NRDC frequently interacts with the Agency on regulatory matters and in litigation, I note that your own previous affiliation with NRDC was limited in scope. As set forth in the Biden pledge waiver issued on April 14, 2021, your previous service to NRDC was limited to FOIA requests on Title VI inquiries only, not related to any actual or underlying Title VI matters. In fact, you did not otherwise serve as the attorney of record for NRDC. Therefore, your prior relationship with NRDC does not weigh against you for the purposes of this factor.

Effect of the matter upon your financial interest – NRDC did not compensate you directly for your services; instead, any financial remuneration was paid to your former employer, Vermont Law School. You do not have a financial conflict of interest with the Vermont Law School.¹

Nature and importance of the employee's role – In addition to serving as the chief legal advisor to EPA and implementing the nation's environmental laws, the Office of General Counsel also provides legal counsel to EPA policymakers and represents the Agency in defense of agency actions. In the position of a Deputy General Counsel, you must be able to advise senior leadership and provide legal counsel and vital input into the Agency's programs and litigations, including those that address pesticides and toxic chemicals among other areas. Your invaluable knowledge and experience are of great importance in advocating the interests of the Agency and in advising the Acting General Counsel and Administrator.

Sensitivity of the matter – We anticipate that specific party matters in which NRDC is a party and that did not involve you personally and substantially may arise during your EPA tenure that will merit your attention and participation because they raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in the Office of General Counsel. Consequently, there is an overlap of recusals that is impinging the ability of the Office of General Counsel to interact with its political leadership on certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior service as an employee in a State government. Your participation as part of your official duties as a Deputy General Counsel is of importance to the continued functioning and continuity of the Office of General Counsel and, therefore, is in the Agency's interests.

Under this limited authorization, you may participate personally and substantially in specific party matters that involve NRDC, so long as they are not the very same specific party matters on which you worked personally and substantially for NRDC or any other party. You will be allowed to participate in these specific party matters, including meetings or communications related to your official duties, where NRDC is present. However, you will

¹ See note to 5 C.F.R. § 2640.201(c).

remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. You will otherwise fully comply with the remainder of the requirements imposed by the Executive Order 13989 and with all applicable federal ethics laws and regulations, as well as your own attorney bar obligations.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

Attachment

cc: Melissa Hoffer, Acting General Counsel
Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices
Elise Packard, Deputy General Counsel for Operations Programs
OGC Associates and Directors
Regional Counsels
Daniel Conrad, Acting Associate Deputy General Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Limited Waiver from Section 1, Paragraph 2 of Executive Order 13989

FROM: James Payne **JAMES PAYNE**
Deputy General Counsel for Environmental Media and Regional Law Offices,
and Designated Agency Ethics Official

TO: Marianne Engelman-Lado
Deputy General Counsel for Environmental Initiatives

Digitally signed by JAMES
PAYNE
Date: 2021.04.14
13:21:48 -04'00'

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021), and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former client, the National Resources Defense Council (NRDC), is a party or represents a party, provided that you did not previously participate personally and substantially in the matter with NRDC or any other party.

BACKGROUND

On January 20, 2021, President Biden signed Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," which includes an Ethics Pledge. The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021 are required to sign the Ethics Pledge, which sets forth the "former client"¹ restriction at Section 1, paragraph 2:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

You entered federal service at EPA effective January 31, 2021 and received your initial

¹ A "former client" is defined as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13989, Section 2(l).

ethics training on February 4, 2021, the same day you signed the Ethics Pledge. You have properly recused yourself from participating in any particular matter in which your former employers or any of your former clients is a party or represents a party. The EPA has identified, however, an interest in having you work on particular matters involving one of your former clients – namely, NRDC -- for which you will require a pledge waiver as set forth in Section 3 of Executive Order 13989. Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.²

ANALYSIS

Your career has been devoted to civil rights and environmental justice. Prior to joining the Biden Administration, you directed an Environmental Justice (EJ) Clinic at Vermont Law School that trains students in community lawyering and civil rights enforcement in the environmental justice context, and also served as Lecturer at both the Yale University School of Public Health and the Yale School of the Environment, where you supervised interdisciplinary teams of law, environmental, and public health students working on climate justice issues.

Your experience also includes ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. You began your legal career as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc. (LDF), where you represented clients attempting to break barriers of access to health care and quality education. You recently served as co-chair of the Equity and Environmental Justice Working Group of Connecticut's Governor's Council on Climate Change, and as a board member of both WE ACT for Environmental Justice and the Center for Public Representation. You have lectured widely and taught graduate, law, and undergraduate level courses. You also hold a B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University.

PREVIOUS INVOLVEMENT IN FOIA CASES WITH NRDC

During the two-year period prior to your federal appointment, on behalf of the EJ Clinic you directed (first at Yale University and then at Vermont Law School), you and co-counsel Southern Environmental Law Center submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA). These FOIA requests were made on behalf of three client groups that included NRDC. This limited waiver applies only to NRDC.

² See Office of Government Ethics Legal Advisory, LA-21-04 (Feb. 18, 2021).

The requests asked for information related to EPA's Title VI of the Civil Rights Act of 1964 (Title VI) docket, including complaints, acknowledgments, jurisdictional decisions, referrals and any dispositive decisions. Upon release of EPA's responsive records, the student team under your supervision reviewed the documents and discussed legal options in consultation with co-counsel and at the direction of the clients. Approximately four FOIA requests were submitted on behalf of these client groups, the first of which was in 2017 while you were at Yale University. You received no compensation specifically for this FOIA-related work that was distinct from your salary provided by your employers for running and supervising a clinic and serving as faculty. Although there were follow-up conversations with employees in EPA's External Civil Rights and Compliance Office (ECRCO) within the Office of General Counsel (OGC), they were limited to the FOIA response. There have been no legal challenges, appeals or litigation related to these FOIA requests.

YOUR OFFICIAL DUTIES ON BEHALF OF EPA

OGC serves as the chief legal advisor to the EPA Administrator and implements the nation's environmental laws. OGC also provides legal counsel to EPA policymakers and represents the Agency in court challenges to agency actions. In your position as Deputy General Counsel for Environmental Initiatives, you have responsibilities within OGC for the External Civil Rights Compliance Office, the Civil Rights and Finance Law Office, and the Pesticides and Toxic Substances Law Office (PTSLO). PTSLO is responsible for legal issues and related litigation for the Office of Chemical Safety and Pollution Prevention (OCSPP) in connection with OCSPP's regulatory efforts addressing pesticides and toxic chemicals governed respectively by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). Similarly, PTSLO also provides legal support for OCSPP related to the Pollution Prevention Act (PPA) and the Toxics Release Inventory (TRI), the program under the Emergency Planning and Community Right-To-Know Act (EPCRA) that informs citizens about toxic releases in their communities. NRDC is frequently involved in these regulatory areas and is often named as a party to the litigation that PTSLO addresses.

In the position of Deputy General Counsel for Environmental Initiatives, your participation in the review and direction of substantive environmental legal matters under FIFRA, TSCA, and TRI is critical to PTSLO's effectiveness in these areas. Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in PTSLO. Consequently, there is an overlap of recusals that is impinging the ability of OGC to interact with our political leadership in certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other OGC political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior involvement as an employee in a State government. Your restriction is due solely to prior service in discrete and limited situations that are unrelated to FIFRA, TSCA and TRI.

For the two years prior to your EPA appointment, the services you personally provided to NRDC were limited to those Title VI-related FOIA requests. You did not provide advice or counsel to NRDC or otherwise enter into an attorney-client relationship with them and received

no compensation from them. The nature of your previous affiliation with NRDC does not relate in any way to their involvement in non-Title VI matters, such as OCSPP litigation or regulatory actions, arising at EPA. During the time period relevant to Section 1, paragraph 2 of the Ethics Pledge, you had no involvement on behalf of NRDC with the types of litigation PTSLO handles.

CONCLUSION

In your position as the Deputy General Counsel for Environmental Initiatives, you must be able to advise senior leadership, including the Administrator, and provide legal counsel and vital input into the Agency's programs and litigations that address pesticides and toxic chemicals. Your prior involvements with NRDC was limited in scope and focused only on a handful of FOIA requests.

For the reasons set forth above, I grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Deputy General Counsel of Environmental Initiatives; to ably advise senior leadership, including the Acting General Counsel, and the Administrator; and to advance the interests of the Agency. The services you provided to NRDC, during the two years prior to your federal appointment were limited to discrete Title VI FOIA requests. I have determined that it is in the public interest for you to participate in certain specific party matters involving this former client due to your critical role and responsibilities associated with PTSLO. I find that the nature of your previous Title VI work should not restrict your ability to provide your legal counsel, vital input, and toxics expertise on litigation related to the Agency's pesticides and toxic chemicals program.

This limited waiver encompasses any such specific party matters arising at EPA where NRDC is a party or represents a party, and you did not previously participate personally and substantially while serving as an attorney for them or any other party. You are allowed to participate in those specific party matters, including meetings or communications relating to your official duties, where NRDC is present. However, you will remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, as well as your own attorney bar obligations.

cc: Dana Remus, Counsel to the President



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

December 21, 2021

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters
Involving the State of California
JUSTINA

FROM: Justina Fugh **FUGH**
Alternate Designated Agency Ethics Official and Director, Ethics Office

TO: Martha Guzman Aceves
Regional Administrator
Region 9

Digitally signed by
JUSTINA FUGH
Date: 2021.12.21
10:05:47 -05'00'

As Regional Administrator for the United States Environmental Protection Agency (EPA) Region 9, you seek permission to participate in specific party matters involving the State of California. Prior to being selected for this position, you served as a Commissioner of the California Public Utilities Commission.

Pursuant to Executive Order 13989 and the Biden Ethics Pledge that you signed upon appointment, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of California employment.

I understand that you have a defined benefit plan with the State of California. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part

¹ See Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

2635, specifically Subpart E, “Impartiality in Performing Official Duty.” Upon assuming the position of Regional Administrator, you will have a “covered relationship” with the State of California pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year after you resigned from the Public Utilities Commission, absent an impartiality determination from an EPA ethics official, you cannot participate in any specific party matter in which the State of California is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency’s political team. You will be asked to participate in discussions and meetings related to particular matters that affect California. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate now as Regional Administrator in particular matters that involve the State of California, but not for any interactions involving the California Public Utilities Commission as an entity. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since your appointment in January 2017, you have served as a commissioner for the California Public Utilities Commission until December 2021. You did not hold any position with the state environmental regulatory agency through which California shares responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with states on a continuing and frequent basis.

Effect of the matter upon your financial interest

I understand that you have a defined benefit plan with the State of California. Although you have a financial conflict of interest pursuant to 18 U.S.C. § 208, it is not disqualifying. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA’s experience, it is unlikely you as the

Regional Administrator will be in any position to affect the State's ability or willingness to pay benefits to its retirees.

Nature and importance of the employee's role – In your role as Regional Administrator, you will be responsible for four states, the Pacific Islands, and 148 Tribal Nations. You will be expected to communicate freely with all of the jurisdictions in your region, including California.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raises nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues will be of importance to the Administrator.

While we have issued you this determination to interact with the State of California, except with the California Public Utilities Commission itself, nothing in this impartiality determination should preclude you from choosing to recuse yourself voluntarily, although you are advised to confer with OGC/Ethics or your Regional Counsel should such a circumstance arise. You should also consult with ethics officials if you have any questions about potential matters involving the California Public Utilities Commission as an entity.

This authorization will remain in effect for the remainder of your cooling off period. After December 19, 2022, you will no longer have a covered relationship with the State of California under the impartiality standards and will no longer require this determination.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Deb Jordan, Deputy Regional Administrator, Region 9
Gretchen Busterud, Acting Regional Counsel, Region 9
Steven Jawgiel, Regional Ethics Counsel, Region 9
Beatrice Wong, Regional Ethics Counsel, Region 9



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

JAN 10 2018

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Florida

FROM: Kevin S. Minoli *KSM*
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: Matthew Leopold
General Counsel

As the General Counsel for the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Florida. Within the last year, prior to being selected for this position, you provided legal services to the Florida Department of Environmental Protection (FL DEP). You ceased providing legal services to the FL DEP on June 30, 2017.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, Executive Order 13770 defines "former employer" to exclude state or local government entities,¹ and the Office of Government Ethics has determined that the same exclusion applies to the definition of "former client."² Therefore, the Ethics Pledge does not apply to your former client. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your former client.

I understand that you have a defined contribution plan with the State of Florida. As such,

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

² See Office of Government Ethics Legal Advisory 17-02 (February 6, 2017), which states that, "[w]ith respect to Executive Order 13770, ethics officials and employees may continue to rely on OGE's prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders," and Office of Government Ethics Legal Advisory DO-09-011 (March 26, 2009), which states that "based on discussions with the White House Counsel's office, OGE has determined that the definition of former client is intended to exclude the same governmental entities as those excluded from the definition of former employer."

you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as General Counsel will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of General Counsel, you will have a "covered relationship" with the State of Florida pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you last provided legal services to the FL DEP, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Florida is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). Absent this impartiality determination, your "cooling off" period with the State of Florida will last until June 30, 2018, which is one year from the date you last provided services to them.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As General Counsel, you are the chief legal advisor to the Agency and Administrator, and part of the Agency's political team. In your role as General Counsel, you are expected to communicate freely with states and you will be asked to participate in discussions and meetings related to particular matters that affect the State of Florida. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as General Counsel in particular matters that

involve the State of Florida with the following limitation: you must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while providing legal services to the FL DEP or while employed by Florida. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Within the last year, you have provided legal services to the FL DEP, which is the Florida state agency responsible for environmental management and stewardship. I note that you previously served as General Counsel for the FL DEP until you left the agency in March 2015. As a private sector attorney, you provided services to the FL DEP in a case in which the United States is not a party, and those services ended on June 30, 2017. Sensitivities regarding your impartiality will necessarily revolve around those issues in which you participated personally and substantially for the FL DEP in all of your previous roles. But, for purposes of the federal impartiality standards, we are focused only on your “covered relationship” with your former client from the last year. I also note that states share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Nature and importance of the employee’s role – In your role as General Counsel, you are the chief legal advisor to the Agency. Among other things, OGC lawyers provide legal counsel to EPA policy-makers, shape national legislation affecting the environment, and provide legal support for the issuance of permits, the approval of state environmental programs, and the initiation and litigation of enforcement actions. As General Counsel, you are expected to communicate freely with states, including Florida.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the FL DEP that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as General Counsel in such matters will be of importance to the Administrator, and therefore, in the Agency’s interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Florida, but not on the very same specific party matters on which you worked on personally and substantially while providing legal services to the FL DEP or while employed with the State of Florida. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue

to recuse yourself from those matters in which you had previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters if necessary. To that end, I understand that you will not participate in any particular matter involving specific parties that are still pending with EPA that you worked on personally and substantially while providing legal services to the FL DEP or employed by Florida. You are cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786

cc: Ryan Jackson, Chief of Staff
Erik Baptist, Senior Deputy General Counsel
David Fotouhi, Deputy General Counsel
Justin Schwab, Deputy General Counsel
Marcella Burke, Deputy General Counsel
Richard L. Albores, Associate Deputy General Counsel
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

Ms. Melissa A. Hoffer
[REDACTED]

By email to: [REDACTED]

Dear Ms. Hoffer:

In anticipation of your joining the United States Environmental Protection Agency (EPA) as the Principal Deputy General Counsel on or about January 20, 2021, you have asked if you would be permitted to participate in making policy decisions regarding specific party matters in which the Commonwealth of Massachusetts is a party or intervenor. Based on your request and the information available to us, the EPA generated the enclosed list of cases.

Within the last year, you have served as the Chief of the Energy and Environment Bureau of the Office of the Massachusetts Attorney General. We understand that you participated personally and substantially in a number of these cases or supervised others who participated personally and substantially in these particular matters that involve Massachusetts as a specific party.

Upon your swearing in as a federal employee, you will have a "covered relationship" with the Commonwealth of Massachusetts pursuant to 5 C.F.R. § 2635.502(b)(iv) and, for one year, must be mindful to avoid an appearance of a loss of impartiality in the performance of your official EPA duties. You do not have any significant financial interest in the Commonwealth of Massachusetts, so the Office of General Counsel does not determine that you had any conflicting financial interest. What remains is an impartiality concern.

Federal ethics regulations permit federal officials to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). These factors are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and

(6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Since we have already determined that you have no substantial conflicting financial interest arising from your employment with Massachusetts, we turned to the six impartiality factors listed in 5 C.F.R. § 2635.502(d), taking each one into careful consideration.

We noted that your prior employment was with a State rather than a private entity. Generally, States share responsibility with EPA in protecting human health and the environment. In fact, with respect to many of our statutes, EPA has directly delegated regulatory and enforcement authority to states. That said, we also appreciate that, in some situations, States are directly regulated by this Agency.

We are mindful of the fact that the position description for the Principal Deputy General Counsel includes "First Assistant" duties for the General Counsel under the Vacancies Reform Act of 1998, 5 U.S.C. § 3345. We therefore considered the interests of the United States Government in a senior political appointee's ability to make policy decisions as to whether or not to continue to pursue current litigation, particularly at the onset of a new administration in the absence of a confirmed General Counsel or Administrator. Although we recognize that you face bar restrictions limiting your ability to participate in these cases substantively, we determined that your participation is not related to the underlying merits of any case but rather you would be making policy decisions only.

After careful consideration of the relevant factors, we conclude that the interest of the federal government outweighs any concerns about a loss of impartiality in your ability to participate in the enclosed list of particular matters that may affect or involve the Commonwealth of Massachusetts as a party and in which you may have participated personally and substantially. After joining the EPA as Principal Deputy General Counsel, you will be permitted to participate in discussions and meetings related to the policy decisions related to these cases. We remind you, however, not to participate in the merits of the cases nor to reveal any client confidences.

Please feel free to contact me or Jim Payne, Designated Agency Ethics Official, if you have any further questions. I can be reached at fugh.justina@epa.gov or (202) 564-1786; Jim can be reached at payne.jim@epa.gov or (202) 564-0212.

Sincerely yours,

Justina Fugh

Digitally signed by Justina
Fugh
Date: 2021.01.19
18:45 38 -05'00'

Justina Fugh

Director, Ethics Office and

Alternate Designated Agency Ethics Official

enclosure

LIST OF CASES IN WHICH MASSACHUSETTS IS A PARTY OR INTERVENOR
PENDING IN EPA'S OFFICE OF GENERAL COUNSEL

Commonwealth of Massachusetts

Defendant Intervenor:

- *Wisconsin v. EPA*, D.C. Cir. 16-1406 - petition for review of EPA's Final Rule titled "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS" 81 Fed. Reg. 74,504 (October 26, 2016)
- *Competitive Enterprise Institute v. EPA*, D.C. Cir. 20-1145 - petition to review "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks" Fed. Reg. 24174-25278 (April 30, 2020)
- *Murray Energy v. EPA*, 16-1127 D.C. Cir. - petition for review of EPA's final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units at 81 Fed. Reg. 24,420 (April 25, 2016)
- D.C. Cir. 16-1430 (defend EPA medium and heavy-duty truck GHG standards)

Intervenor:

- *League of United Latin American Citizens (LULAC), et al. v. EPA*, 9th Cir. 17-71636 - Challenge to March 29, 2017 order denying PANNA/NRDC FFDCA petition
- *North Dakota v. EPA*, D.C. Cir. No.15-1381 - EGU GHG 111(b)

Petitioner

- D.C. Cir. 19-1230 (SAFE CA waiver)
- *New York et. al. v. Wheeler et. al.*, S.D.N.Y. 19-11673 - Challenge to the rule repealing the 2015 definition of "waters of the United States" under the CWA and reinstating the prior regulatory definition.
- *New York et. al. v. EPA*, D.C. Cir. 17-1273 - petition for review of EPA's final action titled "Response to the December 9, 2013, Clean Air Act Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont," 82 Fed. Reg. 51,238 (November 3, 2017)
- *New York et. al. v. EPA*, D.D.C. 1:18-cv-00773 - for failure to establish guidelines for standards of performance for methane emissions from existing oil and gas operations
- *New York et. al. v. EPA*, D.C. Cir. 18-xxxx - petition for review of EPA's notice entitled "Protection of Stratospheric Ozone: Notification of Guidance and a Stakeholder Meeting Concerning the Significant New Alternatives Policy (SNAP) Program," 83 Fed. Reg. 18,431 (April 27, 2018)
- *New York et. al. v. Wheeler et. al.*, 9th Cir. 19-71982 - Petition for review of "Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order"
- *New York et. al. v. EPA*, D.C. Cir. 19-1165 - petition for review of EPA's final agency action entitled "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations," published at 84 Fed. Reg. 32,520 (July 8, 2019)
- *New York et. al. v. EPA*, D.C. Cir 20-1437 - petition for review of EPA's final action titled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Final Actions on Petitions for Reconsideration" at 85 Fed. Reg. 55,286 (Sept. 4, 2020)
- *New York et. al. v. EPA*, S.D.N.Y. 1:21-cv-00252 - for failure to approve or disapprove Good Neighbor state implementation plans for the 2015 ozone NAAQS for 6 states (IN, KY, MI, OH, TX, WV)

- *New York et. al. v. EPA*, S.D.N.Y. 1:16-cv-07827 - Failure to Act on their Petitions Under Clean Air Act Section 176A
- *California et. al. v. EPA*, D.C. Cir. Case No. 21-XXXX – petition for review of final agency action entitled “Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures,” published at 86 Fed. Reg. 2,136 (Jan. 11, 2021).
- *California et. al. v. Wheeler et. al.*, N.D. Cal. 3:20cv03005 – NWPR
- *California et. al. v. EPA*, N.D. Cal. 3:17-cv-06936; 4:17-cv-06936 - for Failure to Issue Designations for 2015 Ozone National Ambient Air Quality Standards
- *California et. al. v. EPA*, D.C. Cir. 20-1357 - Petition for review challenging the Oil & Gas Policy Rule: “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review” 85 Fed. Reg. 57,018 (Sept. 14, 2020)
- *California et. al. v. EPA*, D.C. Cir. 21-1014 - petition for review of EPA's final action entitled “Review of the National Ambient Air Quality Standards for Particulate Matter,” published at 85 Fed. Reg. 82,684 (Dec. 18, 2020)
- *Commonwealth of Massachusetts et. al v. EPA*, 3:03-CV-984 D. Conn. - Failure to list CO2 as a criteria pollutant
- *Commonwealth of Massachusetts et. al v. EPA*, D.C. Cir. 20-1221 - Petition for Review of EPA’s National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review at 85 Fed. Reg. 31,286 (May 22, 2020) (aka MATS)
- *New Jersey et. al. v. EPA*, S.D.N.Y. 1:20-cv-01425 - for Failure to Perform Nondiscretionary Duty to Promulgate Federal Implementation Plans for the Good Neighbor Provision Requirements for the 2008 Ozone NAAQS
- *American Lung Association v EPA*, D.C. Cir No. 19-1440 – ACE litigation
- D.C. Cir. No. 20-1145
- N.D. Cal. No. 19-cv-03807 (TSCA asbestos reporting)
- Ninth Cir. No. 20-73276 (methylene chloride risk evaluation)
- N.D. Cal. No. 20-cv-04869 (limiting state authority re Section 401 water quality certifications)
- MA-led amicus in support of challenge to WOTUS, D-Mass 12/20 (do not have docket no.)

Massachusetts Department of Environmental Protection

Defendant:

- *Alderson v. EPA et. al.*, 1:10-cv-10793 (appears dismissed but displayed as active?)
- *PSD Appeal No. 14-02*, E.A.B.- PSD permit issued by Massachusetts DEP
- *Brooks v. EPA et. al.*, 1st Cir. 14-2252, petition for review of Notice of Decision To Issue a Clean Air Act PSD Permit for Salem Harbor Redevelopment Project
- *Rauseo v. Army Corps of Engineers et. al.*, D. Mass. 1:17-cv-12026-NMG - Failure to exercise jurisdiction over filled wetlands

ADDITIONAL CASES:

- *Greenroots, Inc. and Conservation Law Foundation v. EPA*, (District of Massachusetts, Case No. 1:21-cv-10065) (Mass is not a party but the case involves some complaints filed with ECRCO against Mass agencies.)
- Intervenor, Newmont USA Limited v. EPA, No. 04-1069 (Challenge to 2002 NSR reform rule treatment of fugitive emissions)
- Petitioner, State of New York v. EPA, No. 20-1022 (Challenge to 2019 RMP Rule) (consolidated under Air Alliance Houston v. EPA, No. 19-1260)

Added 1/21/21: GAS PROCESSORS ASSOCIATION V. EPA, 11-1023, D.C. Cir.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

February 2, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the Commonwealth of Massachusetts

FROM: Justina Fugh, Alternate Designated Agency Ethics Official and Director, Ethics Office **Justina Fugh**

Digitally signed by Justina
Fugh
Date: 2021.02.02
00:03:39 -05'00'

TO: Melissa Hoffer
Acting General Counsel

As the Acting General Counsel of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the Commonwealth of Massachusetts. Within the last year, prior to being selected for this position, you served as the Chief of the Energy and Environment Bureau with the Massachusetts Attorney General's Office.

On January 20, 2021, you were appointed to the position of EPA's Principal Deputy General Counsel. The Acting Administrator approved that appointment on January 28, 2021. Based upon your appointment as the first assistant to the EPA General Counsel, you automatically became the Acting EPA General Counsel as a matter of law under 5 U.S.C. § 3345(a)(1). An incoming Principal Deputy General Counsel, appointed to that position after the General Counsel vacancy arises, may automatically serve in an acting capacity. *See* Designation of Acting Associate Attorney General, 25 Op. O.L.C. 177, 179 (2001).

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your Massachusetts employment. Federal ethics rules, however, do not contain a similar exclusion for state government, so those rules do apply to your prior employment with the Commonwealth of Massachusetts.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." You have a "covered

¹ *See* Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

relationship” with the Commonwealth of Massachusetts under 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date your employment with the Attorney General’s Office terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which the Commonwealth of Massachusetts is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that we take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

As Acting General Counsel, you are the chief legal advisor to the Agency and part of the Agency’s political leadership. In your current role as Acting General Counsel, and in your role as Principal Deputy General Counsel if you revert back within a year, you are expected to communicate freely with states, and you will be asked to participate in discussions and meetings related to particular matters that affect the Commonwealth of Massachusetts. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as part of your official EPA duties in particular matters that involve the Commonwealth of Massachusetts with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with the Attorney General’s Office.

In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2015, you have served as the Chief of the Energy and Environment Bureau with the Massachusetts Attorney General’s Office. In this role, you oversaw the Bureau’s attorneys on matters including prosecuting civil and criminal enforcement of environmental laws, energy policy, ratepayer advocacy, defensive cases, and affirmative advocacy. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Attorney General’s Office. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – We have determined that you do not have any significant financial interest in the Commonwealth of Massachusetts, so you do not have any conflicting financial interest.

Nature and importance of the employee's role – As the Acting General Counsel, you are the chief legal advisor to the Agency. Among other things, OGC lawyers provide legal counsel to EPA policymakers, shape national legislation affecting the environment, and provide legal support for the issuance of permits, the approval of environmental programs, and the initiation and litigation of enforcement actions. As Acting General Counsel, or as Principal Deputy General Counsel if you should revert back within a year, you are expected to communicate freely with states, including Massachusetts.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the Massachusetts Attorney General's Office that will rise to your level of attention, merit your participation, and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as part of your official duties as Acting General Counsel, or as Principal Deputy General Counsel if you should revert back to those duties within the year, in such matters will be of importance to the Acting Administrator and the confirmed Administrator and, therefore, is in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the Commonwealth of Massachusetts, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Massachusetts Attorney General's Office. If the Agency determines that it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

You are also cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics. On January 19, 2021, I issued you an impartiality determination allowing you to participate in discussions and meetings related to the policy decisions for those cases that may affect or involve the Commonwealth of Massachusetts and in which you may have participated personally and substantially. However, you were reminded not to participate in the merits of those cases nor to reveal any client confidences.

While I have issued you this determination to interact with the Commonwealth of Massachusetts with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves Massachusetts. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices
Elise Packard, Deputy General Counsel for Operations Programs
Daniel H. Conrad, Acting Associate Deputy General Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the North Carolina Department of Environmental Quality

FROM: James Payne **JAMES PAYNE**
Designated Agency Ethics Official and Deputy General Counsel for Environmental Media and Regional Law Offices

TO: Michael S. Regan
Administrator

Digitally signed by JAMES
PAYNE
Date: 2021.03.11
12:17:02 -05'00'

As the Administrator of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the North Carolina Department of Environmental Quality (NC DEQ). Within the last year, prior to being confirmed, you served as Secretary of the NC DEQ.

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state and local government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your NC DEQ employment. Federal ethics rules, however, do not contain a similar exclusion for state or local government, so those rules do apply to your prior employment with the NC DEQ.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." You have a "covered relationship" with the NC DEQ under 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date your employment with the NC DEQ terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which the NC DEQ is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

¹ *See* Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that we take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Administrator in particular matters that involve the NC DEQ with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with NC DEQ. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2017, you have served as Secretary of the North Carolina Department of Environmental Quality. In this role, you oversaw the state agency whose mission is to protect North Carolina's environment and natural resources. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the NC DEQ. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined benefit plan with the State of North Carolina. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflicts of interest statute. See 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA's experience, it is unlikely you, as the Administrator, will be in any position to affect the State's ability or willingness to pay these benefits to its retirees.

Nature and importance of the employee's role – You have been appointed by the President and confirmed by the Senate to serve as the EPA Administrator, which is a crucial role in guiding and planning the Agency's work. As the leader of EPA, you are expected to communicate freely with states, including North Carolina.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the NC DEQ that will rise to your level of attention, merit your participation, and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Administrator in such matters will be in the Agency's interests given the leadership role that you serve. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the NC DEQ, but not on the very same specific party matters on which you worked on personally and substantially while employed by the NC DEQ. With respect to any particular matters involving the NC DEQ as a specific party and in which you previously participated personally and substantially, you have voluntarily agreed, pursuant to our advice, not to participate at all for the duration of your EPA tenure. If the Agency determines that it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

While I have issued you this determination to interact with the NC DEQ with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves the NC DEQ as a specific party. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Dan Utech, Chief of Staff
Alison Cassidy, Deputy Chief of Staff for Policy
Dorien Paul Blythers, Deputy Chief of Staff for Operations
Kathleen Lance, Director of Scheduling and Advance
Justina Fugh, Alternate Designated Agency Ethics Official




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OCT 24 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Specific Party Matters Involving the State of New York, Including the New York State Assembly

FROM: Kevin S. Minoli 
Designated Agency Ethics Official and
Acting General Counsel

TO: Peter D. Lopez
Regional Administrator
Region II

On October 10, 2017, I issued an impartiality determination authorizing you to participate in particular matters that affect the State of New York. This determination allowed you to interact with the State of New York, except for the New York State Assembly as an entity. This authorization is attached and hereby incorporated by reference.

You recently asked the Office of General Counsel/Ethics (OGC/Ethics) whether this determination limits you from interacting with members of the New York State Assembly as the elected representatives of their districts or from interacting with chairpersons of New York State Assembly Committees. Based on your October 10, 2017 conversation with OGC/Ethics and upon further consideration of your need to freely interact with the Assembly's elected representatives and legislative committees, I am rescinding the limitation related to the New York State Assembly. Therefore, you are now authorized to interact with the State of New York, including the New York State Assembly, its elected members, and Committee chairpersons.

All other portions of the October 10, 2017 impartiality determination are still in effect for the remainder of your cooling off period. If you have any questions regarding this determination, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Catherine McCabe, Deputy Regional Administrator, Region II
Eric Schaaf, Regional Counsel, Region II
Mitchell Cohen, Regional Ethics Counsel, Region II
Eduardo J. Gonzalez, Regional Ethics Counsel, Region II
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OCT 10 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters
Involving the State of New York

FROM: Kevin S. Minoli
Designated Agency Ethics Official and
Acting General Counsel

K SQ.

TO: Peter D. Lopez
Regional Administrator - Designee
Region II

In anticipation of being appointed as the Regional Administrator for the United States Environmental Protection Agency (EPA) Region II, you sought permission to participate in specific party matters involving the State of New York. Within the last year, prior to being appointed to this position, you served as an elected member of the New York State Assembly.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of New York employment.

Federal ethics rules do not contain a similar exclusion for state governments, and those rules do apply to your employment with the State of New York. In particular, I understand that you have a defined benefit plan with the State of New York. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties. Should you encounter a situation that could raise such a concern at any point in your EPA tenure.

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

please contact our office for additional guidance.

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you will have a "covered relationship" with the State of New York pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the time you resigned from the New York State Assembly, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of New York is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You will be asked to participate in discussions and meetings related to particular matters that affect New York. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of New York, but not for any interactions involving the New York State Assembly as an entity. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2007, you served as an elected member of the New York State Assembly (the lower house of the New York State Legislature) representing a seven county region. Although you were a member on the New York Assembly Committee on Environmental Conservation and subsequently involved with state environmental issues, your prior employment was as an elected official, rather than with the state environmental agency. States share responsibility with EPA in protecting human health and the environment. With

respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with states on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Regional Administrator will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – As the leader of Region II, New York is a substantial area of responsibility for you since the Region covers two states, one commonwealth and one territory. In your role as Regional Administrator, you are expected to communicate freely with states, including New York.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues and critical issues facing Region II will be of importance to the Administrator.

While we have issued you this determination to interact with the State of New York, except for the New York State Assembly, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves New York. Nothing in this impartiality determination should preclude you from choosing to recuse yourself, although you are advised to confer with your Regional Counsel should such a circumstance arise. You should also consult with ethics officials if you have any questions about potential matters involving the New York State Assembly as an entity.

This authorization will remain in effect for the remainder of your cooling off period. After one year from the date of your resignation from the New York State Assembly, you will no longer have a covered relationship with the State of New York under the impartiality standards and will no longer require this determination.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Catherine McCabe, Deputy Regional Administrator, Region II
Eric Schaaf, Regional Counsel, Region II
Mitchell Cohen, Regional Ethics Counsel, Region II
Eduardo J. Gonzalez, Regional Ethics Counsel, Region II
Justina Fugh, Senior Counsel for Ethics